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SECURITY COUNCIL
Fifty-first year

Letter dated 14 March 1996 from the Permanent Representative of Cuba to the United Nations addressed to the Secretary-General

I have the honour to write to you to request that the attached document, containing the statement made on 6 March 1996 by Mr. Ricardo Alarcón de Quesada, President of the National Assembly of People's Power of the Republic of Cuba, to the Council of the International Civil Aviation Organization, be circulated as an official document of the General Assembly at its fiftieth session, under item 140, and of the Security Council.

(Signed) Bruno RODRIGUEZ PARRILLA
Ambassador
Permanent Representative of Cuba
to the United Nations

Annex

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ANNEX

Statement by Ricardo Alarcon, President of the National Assembly of People's Power of the Republic of Cuba, to the Council of the International Civil Aviation Organization

6 March 1996

It has not been easy for my delegation to get here because it represents a country that has been suffering, for more than 30 years, from a cruel economic blockade which, inter alia, prevents it from having access to certain air routes in this region. Our direct scheduled flights to this city of Montreal are forced to deviate from what would be their normal route, with the inevitable consequences that this has in cost and time, because they are not allowed to overfly the territory of the United States.

Paradoxically, I also represent the country through whose air corridors nearly 400 scheduled commercial flights pass each day, to which our aeronautical services always provide the necessary support and cooperation. Day after day, thousands of United States citizens fly without risk or difficulty through Cuban skies. Not once has there been any incident that has affected civil transport through Cuban airspace. In short, we are one of the countries of Latin America and the Caribbean which provides the most aeronautical services to the airlines and travellers of the country which, however, not only maintains a blockade against us but also obstructs the normal development of Cuban activities in this area and from whose territory, furthermore, hostile, piratical acts that violate international navigation regulations are launched against my country; this has been happening for many years and it is still happening today.

The first preambular paragraph of the Convention on International Civil Aviation signed at Chicago on 7 December 1944, states that "the future development of international civil aviation can greatly help to create and to preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security" [emphasis added].

As can be seen, in order for international civil aviation to develop harmoniously and properly, it is necessary not only to apply all the regulations and recommendations which the International Civil Aviation Organization (ICAO) establishes to regulate such aviation but also to prevent the occurrence, in the area of international aviation, of acts inconsistent with its purposes, which might endanger it and threaten general security.

For many years Cuba has been subjected to violations of its sovereignty and territorial integrity involving the use of aircraft originating in United States territory, in violation of the rules of international law, and in particular of articles 1, 2 and 4 of the Chicago Convention.

The aircraft used for the perpetration of these aggressive acts have, on many occasions, been aircraft designed for civilian purposes, although, as in the specific case of the models used in the most recent provocations, they can

also be used for military purposes and, indeed, were used in the war against Viet Nam.

For a number of years, light aircraft registered in the United States and operated by an organization calling itself "Brothers to the Rescue" have been operating within the Havana flight information region (FIR) and on many occasions have penetrated Cuban territory without prior authorization for purposes that were clearly illegal and incompatible with the letter and spirit of the Chicago Convention. Although the real purpose of their missions has always been to undermine Cuban sovereignty and engage in subversion, initially they claimed to be involved in so-called rescue operations which, in any case, are a public function of a State, and, in the case of the United States, are not the responsibility of private individuals but part of the Coast Guard's normal work.

During the past 20 months, these aircraft, originating in the territory of the United States, have violated Cuban airspace 25 times. In every case, each violation has been officially reported to the authorities of that country.

In September 1994, during a bilateral meeting between representatives of the civil aviation administrations of Cuba and the United States, Cuba provided reports which showed that on a number of previous occasions those aircraft had penetrated inside Cuban territorial airspace. At that meeting, the United States expressed its concern about those events and acknowledged that those flights also constituted a threat to the safety of the genuine rescue efforts carried out by the United States Coast Guard.

Shortly thereafter, on 10 November 1994, two Cessna-337 aircraft took off from Guantánamo Naval Base, flew over the extreme eastern part of Cuban territory and dropped subversive leaflets on it.

On 4 April 1995, a Cessna-337 penetrated Cuban territorial waters north of the city of Havana and flew more than 40 kilometres along the coast at a distance of between 5 and 10 nautical miles from the coast.

On 13 July 1995, aircraft of "Brothers to the Rescue" penetrated over Cuban territorial waters north of our capital, entered prohibited zone MU-P1 and overflew over the city at very low altitude, dropping leaflets and behaving in a dangerous and careless manner.

Each and every one of these violations was reported to the United States authorities, who were also warned of Cuba's decision to defend its sovereignty and protect its territorial integrity; they were also reminded that they had an obligation to prevent and avoid actions that were clearly contrary to international law and to the Chicago Convention. Unfortunately, our protests and warnings fell on deaf ears and, as events have shown, the provocateurs were emboldened by their impunity and the provocations became more frequent and more intense.

With regard to the incident provoked on 24 February 1996, attempts have been made in various news media and in official statements arbitrarily to equate the acts carried out against Cuban territory with legitimate civil aviation

activities. However, a simple examination of the facts and of their background and context clearly show this claim to be without foundation.

In the specific case of the provocations and acts carried out by the gang called "Brothers to the Rescue", it is clear that, from the outset, they have had nothing to do with the provision of a "scheduled service performed by aircraft for the public transport of passengers, mail or cargo", as article 96 of the Chicago Convention defines air service.

Since it was established, this group has had as its purpose to carry out acts against the sovereignty and territorial integrity of the Republic of Cuba, including acts of a subversive nature using military means or means of destruction. Such acts, which are part of a long history of armed actions taken against Cuba by small aircraft from the North, have been the subject of numerous complaints by the Cuban authorities to the authorities of the United States, from whose airports those aircraft had come.

Furthermore, in the course of these actions, this gang's aeroplanes have committed a series of violations of international air regulations and those of the United States itself which could have endangered normal international civil aviation activity in this area. The United States authorities themselves had prior knowledge of some of these violations and informed our authorities of them. For example, in note 577, dated 18 October 1995, the United States Government informed the Cuban Government that on 21 October members of this group were intending to approach the boundaries of Cuban airspace in order to transmit short wave television and radio signals to Cuba from ships located outside Cuban territorial waters for about one half hour. In the same note, it was pointed out that United States officials had advised the organizers of the fleet of the provisions of international law and United States law with regard to unauthorized transmissions from ships or aircraft registered in the United States and had urged them not to issue illegal transmissions.

Even earlier, in a note from the Department of State on 28 August 1995, the Government of Cuba was informed that the Federal Aviation Administration (FAA) was investigating the possible violation of Annex 2 to the Convention on International Civil Aviation by Mr. José Basulto, the person chiefly responsible for the so-called "Brothers to the Rescue" group, and on 5 October of the same year, by note 553 from its Interests Section at Havana, it reported that the Federal Aviation Administration accused José Basulto, a leader of the "Brothers to the Rescue" group, of violating federal aviation regulation 91.703 by piloting an aircraft registered in the United States within a foreign country without complying with the regulations of the country and regulation 91.13 by piloting an aircraft in a negligent manner, endangering the lives and property of others. The same note added that the Federal Aviation Administration requested the Government of Cuba to provide evidence that could be relevant to those charges against Basulto.

On 16 February 1996, in addition to expressing thanks for the information supplied by the Government of Cuba, a note from the State Department informed Cuba that the Federal Aviation Administration was continuing its investigations on José Basulto, who was facing charges of violation of Federal Aviation Regulation 91.703.

As may be seen, the United States authorities were perfectly aware of the existence of a group organized in the territory of the United States, equipped with aircraft and involved in carrying out activities inconsistent with the provision of international air services, which uses those aircraft for patently political purposes, disregarding Cuban sovereignty and also ignoring the regulations of the very State in which those aircraft are registered and where its pilots had obtained licences to operate them.

In addition to armed actions, this group carried out serious provocations against Cuban territory, including the capital of the Republic, on 9 and 13 January 1996, dropping subversive propaganda calling for actions contrary to Cuban constitutional order. These provocations were officially reported by the Cuban Government to the United States Government, but they were also revealed publicly and ostentatiously in the news media in Florida by the very people who had carried them out. We have no alternative but to point out the inexplicable negligence of the United States authorities, which permitted the flights on those days in January by persons and aircraft which were the subject of an investigation begun five months earlier, on the basis of which the Federal Aviation Administration had initiated legal proceedings. Even more suspect is this negligent attitude, which allowed them to carry out new aerial incursions on 24 February, barely a week after sending us an official note reiterating the existence of such charges and thanking us for the cooperation which the Cuban authorities were showing to their United States counterparts.

Nevertheless, in the morning of 24 February, these Cessna 337 aeroplanes bearing registration numbers N-2506, N-5485S and N-2456S took off from Opa Locka once again, penetrated Cuban airspace north of the capital and returned to their point of departure in Florida. That same afternoon, these same aeroplanes took off from the same Florida airport again and headed for the City of Havana, penetrated dangerous areas located in the northern part of the Havana FIR, despite the warnings issued to them by the air traffic control centre, recklessly continued the flight and made a further incursion into Cuban territory. The intruder aircraft were intercepted by fighters from our Air Force, which warned them to withdraw. Two of them ignored the warnings of the interceptors and unavoidably provoked the well-known regrettable consequences.

Evidence of our restraint and of the moderation shown by our pilots is the leader of the aggressor squadron himself, who was able to exit from our territory and return to the United States safe and sound, since he, unlike the other pilots, had withdrawn from the national airspace.

It must be stressed that what we are dealing with here is not only hostile and provocative acts against the Republic of Cuba, as grave and illegal as they are, but also the fact that all the activities carried out by the so-called "Brothers to the Rescue" are violations of the standards which govern international civil aviation and may consequently endanger the lives and safety of many people and aircraft, which it is the fundamental obligation of the International Civil Aviation Organization to protect. This is clearly shown by the intention, denounced by the United States authorities themselves, to make radio and television transmissions from international airspace, but also, among others, by the alteration of the flight plans which must be submitted to the aviation authorities of the country of origin, by the use of their radio

communication facilities for purposes other than those for which they are intended and by their unauthorized, uncontrolled and unregulated presence for the purpose of realizing objectives other than the provision of international air service in an area where a sizeable amount of international civil aviation activity takes place and which is traversed by several of the most active international corridors in the western hemisphere. But there have also been other actions by these individuals directly aimed at third parties and in the face of which the attitude of the United States has been extremely benign: for example, the one reported on 28 February 1996 by the Los Angeles Times newspaper concerning the incident which occurred in June 1994, when a "Brothers to the Rescue" aeroplane piloted by Mr. Carlos Ernesto Gardner sliced off the mast of a civilian ship when it was sailing in the Straits of Florida. According to what leaked out, the only measure taken by the United States authorities in this case was the suspension of Mr. Gardner's licence for 90 days.

The United States refers to the incident of 24 February 1996 as if it were an isolated event, detached from the circumstances and the background against which it must necessarily be analysed.

Perhaps the provocateurs who violated Cuban sovereignty were unknown to the United States? Had they or had they not been charged by the United States authorities with their previous violations? Had they or had they not been warned by them previously?

But, in addition, where did the incident occur, near the United States border or in proximity to the Cuban capital?

For over three decades, Cuba has been subject to violations of its territory by aircraft coming from the United States, using United State airports and flown by pilots with licences issued by United States authorities which have allowed them to leave that country and return to it after committing their misdeeds. There have never been any such violations in the opposite direction, Cuba has never been a base for illegal operations against our neighbour's territorial airspace.

And if the situation had been the other way round? For how long would the United States have allowed its territorial integrity to be violated by a group of criminals? How many times would it have tolerated such acts of provocation if they had occurred over its capital city?

They are also trying to cover up the nature of the incident by describing those who provoked it as "civilians". This is a fallacious and dangerous stratagem that ICAO should not allow. What is fundamental and must be clarified in this matter is the nature of the activities of the so-called "Brothers to the Rescue" and the need to take urgent, stringent measures to put an end to their activities which are, among other things, a "misuse" of international civil aviation and, therefore, a threat to the safety of this vital service.

Neither in the Chicago Convention, in international or United States legal doctrine nor in practice are activities such as those carried out by the above group recognized as corresponding to the concept of civil aviation. The fact that it is not identified as the instrument of a State does not, in and of

itself, confer civil status on any aircraft unless the function it performs is restricted to and consistent with the aims clearly established in the Chicago Convention.

In an often cited article on the treatment of air intruders in recent practice and international law, United States international law Professor Oliver J. Lissitzyn states that, in cases where there is reason to believe that the intruder's intentions may be hostile or illicit, an order or warning to enter should normally be issued and the intruder may then be attacked if he disobeys. Among such illicit intentions he mentions aid to subversive activities, smuggling or a premeditated challenge to territorial sovereignty.

Professor Michael Nilde, a prestigious Canadian scholar and former Director of the Legal Bureau of ICAO, has put an end to any confusion by stating that it is not the aircraft's technical design, registry, ownership or crew that determines its nature, but the function for which it is used.

I do not wish to burden you with further quotations. I shall only say that there are many of them and that they might even include some judgements of United States federal courts. However, I should like to draw attention to something related to actual contemporary practice.

I am making available to members of the Council this document, which contains the written transcript of a programme broadcast on 5 January 1996 on the television news programme of the United States broadcasting corporation NBC. It describes what happened to some 100 small aircraft which were, of course, identified as "civil" but were suspected of links to drug trafficking. Some two dozen were shot down and many more destroyed on the ground. You will see from the transcript that some people think that the United States should not attack unarmed aircraft and that others fear that innocent people may have met with this kind of sudden death. According to the transcript, the United States is devoting some $120 million this year to this programme to shoot down and destroy small aircraft, in other words, a figure more than double the total budget of the International Civil Aviation Organization.

I do not wish to question the wisdom of this stringent programme against drug trafficking that the Government of the country that is the world's biggest consumer of illicit drugs is carrying out beyond its borders. I only wish to point to the inconsistency of the United States attitude in organizing and waging such drastic action against small, non-State aircraft, which are attacked without notice or warning, while at the same time trying to protect under the guise of "civil" aviation other aircraft which they know to be involved in equally illicit activities. Do the United States authorities not think that they should occasionally try to be consistent in their international policy? Has it not occurred to them that by tolerating illegality in their own territory, they run the risk of undermining their own interests?

Curiously, reference is being made to article 3 bis, which it is proposed be added to the Chicago Convention. Setting aside the question of the legal status of a proposal which has yet to receive the support required for it to enter into force, allow me to make some comments on the proposed text. First of all, it refers exclusively to "civil aircraft", the nature of which is clearly

defined in the Convention itself. Secondly, article 3 bis does not modify in any way the rights and obligations set forth in the Charter of the United Nations. However, it also establishes clearly the obligation of any civil aircraft to comply with an order given it by the State in whose airspace it is flying, and the obligation of the aircraft's State of origin to ensure compliance with that order and to punish violators severely. Paragraph (d) of proposed article 3 bis could not be clearer: "Each Contracting State shall take appropriate measures to prohibit the deliberate use of any civil aircraft registered in that State, or operated by an operator who has his principal place of business or permanent residence in that State, for any purpose inconsistent with the aims of this Convention."

On 1 March 1996, the United States Government issued precise orders designed, it was said, to put an immediate end to attempts to violate Cuban territorial airspace, and it deployed units of the Coast Guard and other means in an area of the Straits of Florida where the "Brothers to the Rescue" gang had announced that it would meet the following day. On that occasion, there was no attempt to violate our territory and presumably the United States authorities would have tried to prevent such an attempt.

The text of the Presidential statement and the provisions issued pursuant to it clearly imply recognition by the United States Government that violations had been occurring up until that time. In fact, if it was necessary to invoke the President's emergency powers and resort to an ostentatious show of force in the Straits, that was because the United States had long neglected its international obligations and proved incapable of enforcing even its own domestic regulations.

Even so, it has to be said that, on this latest occasion and in the presence of United States officials, the provocateurs again flouted international regulations by using their radio equipment to broadcast a religious ceremony over frequencies the sole legitimate purpose of which is to provide a necessary service to international civil aviation. In so doing, they arbitrarily and illegally placed such aviation at risk.

Cuba has requested this Council to investigate the serious violations of ICAO principles and standards of which our country has been the victim and which led to the 24 February 1996 incident. We are relying on the Council to take appropriate measures to conduct a thorough and rigorous investigation of these violations, their background and the circumstances in which they took place. We, for our part, officially pledge our full cooperation to that end and invite the Council to send a delegation to our country as soon as possible. At the same time, we demand that the United States authorities show the same willingness and that ICAO be permitted to conduct a meaningful and thorough investigation in the place where the problem originates, the acts of aggression come from, the crimes are planned and organized and international norms are flouted: in the United States.

Since 1959, the Republic of Cuba has been the object of constant acts of aggression and provocation in which small aircraft, as well as other means, have been used. Using this type of aircraft, Cuban citizens have been murdered or seriously injured, their homes or social facilities have been destroyed and

their sugar plantations have been burned. Small aircraft have been used to bring arms and explosives into Cuba, as well as biological agents which have caused serious harm to people and agricultural production. Small aircraft are well known to our people for what they have been: deadly weapons in a cruel, prolonged and dirty war. The very Government which is trying cynically to present such aircraft as doves of peace has been and continues to be responsible for that war.

It was from the same airport of Opa Locka from which today's terrorists come and go freely that, 35 years ago, aircraft departed to bomb Cuba when my country was invaded militarily at the Bay of Pigs. On that occasion, a moderate and intelligent man was placed in an embarrassing situation by his Government: then Ambassador Adlai Stephenson had the unpleasant task of claiming to the Security Council that the United States aggressor aircraft, flying with crudely altered markings, were Cuban aircraft. As you know, it was only a matter of days before that lie was exposed.

Now they are trying to confound the world again and to pass off hardened terrorists as peaceful travellers. Yet the aircraft currently piloted by the leader of the gang bears the identification number that was used by the band of mercenaries to which he belonged and which was overwhelmingly defeated at the Bay of Pigs.

Let that be a reminder to all of them: the terrorists, their backers and their accomplices. Any aggression will have to contend with a strong and united people who will know how to resist and overcome. Now, as then, mercenaries will always be defeated.